[redacted]

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

JUAN PEREZ CAMI,
MUNICIPAL COMMISSION OF
FINANCE
Petitioner.

vs.

CENTRAL VICTORIA, LTD.
Respondent.

No.----------

To the Honorable, the Supreme Court
of the United States.

Juan Pérez Cami, Municipal Commissioner of Finance of the Municipality of Carolina, Porto Rico, by his counsel the undersigned, respectfully petitions this Honorable Court for a writ of certiorari to be addressed to the United States Circuit Court of Appeals for the First Circuit in the case entitled "Central Victoria, Ltd., plaintiff-appellant vs. Juan Pérez Gami, Municipal Commissioner of Finance, defendant, No. 1609," and in support of said petition respectfully shows.

I.

That on March 17th, 1921 respondent herein filed a verified petition for an injuction against your petitioner in the District Court for the Judicial District of San Juan, Porto Rico—Second Division, for the purpose of testing the legality of an

ordinance enacted by the Municipal Assembly of Carolina, P. R., imposing a tax of ten (10) cents upon the manufacture of every hundred weight of sugar manufactured within the Municipal of Carolina, alleging in said petition that the tax thus imposed was "illegal and null." (R. p, 1) and on the same date the court under a separate petition granted a preliminary injunction. (R. p. 6). On March 28th. 1921 your petitioner filed his verified answer denying all the allegations of the ordinance except those alleging the enactment of the ordinance; that under its terms your petitioner is authorized either personally or by the employees of his Department to proceed to ascertain whether the statements made by the respondent as to the amount of sugar manufactured was correct, and it was proposed to collect the tax (R. p. 9). By the allegations of its petition respondent was a corporation engaged in the manufacture of sugar within the Municipality of Carolina, Porto Rico. (R. p. 3).

No evidence was taken is support of the controverted allegations of the respondent's petitions, and by stipulation the case was submitted to the Court for decision. (R. p. 23) The Court adjuged the tax imposed by the ordinance to be null and void and permanently enjoined your petitioner from collecting said tax. (R. p. 31). Your petition the appealed from the said judgment to the Supreme Court of Porto Rico, which after argument and submission, on April 28th. 1922 by a unanimous decision, entered the following judgment:

> "For the reasons stated in the foregoing opinion this court decides that it should reverse as it does reverse, the judgment appealed from rendered by the District Court of San Juan, Second Section, on June 11th. 1921; and to annul as it does annul hereby, the writ issued in this case, and therefore dismisses the complaint, without special imposition of costs." (R. p. 36)

Thereupon the respondent took the case on appeal to the United States Circuit Court of Appeal for the First Circuit and after argument and submisions, the said Circuit Court of Appeals, on Februaray 5th. 1925 reversed the judgment of the Supreme Court of Porto Rico, handing down a PER CURIAM opinion reading as follows:

"This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzi v Municipal Assembly of Arroyo, Porto Rico." (R. p. 47).

(II)

A certified copy of the record of this case including the in the court to which the writ is asked to be addressed, is furnished herewith as an exhibit.

(III)

Your petitioner is advised that the judgment of the said Circuit Court of Appeals is final, and is erroneous, and that this Honorable Court would be pleased to require the said case to be certified to it for its review and determination under the act of Congress permiting causes made final in the Circuit of Appeals to be certified for revision.

(IV)

And your petitioner further says that the grounds for the issuance of this writ are as follows:

ASSIGNMENTS OF ERROR.

The circuit Court of Appeals erred:

(*a*) In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the Municipality by the ordinance enacted February 17th, 1921, effective after July 1st, 1921.

(*b*) Assuming that a license tax had already been imposed upon respondent for the year of 1921 for conducting the business of a sugar mill, the Circuit Court of Appeals erred in holding that the tax upon the manufacture of sugar imposed by the ordinance of February 17th, 1921,

effective after July 1st, 1921, was double taxation and therefore invalid.

(*c*) In holding that it was the intention of the Legislature of Porto Rico that any excise tax which should be levied by the Municipality should be one other than those enumerated in Act No. 26 of the Legislature of 1914 re-enacted by the Legislature in 1920, (d) of section 9 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th, 1921 by the Act of Congress of 1917 known as the Organic Act for Porto Rico, or by the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of Feb. 17th, 1921, imposing a tax upon the manufacture of sugar was a constituent element of a business already taxed by a license tax, and was therefore and not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th, 1921.

This controversy not only involves large sums of money due, to this Municipality, under the tax held to be invalid, but to other municipalities which have imposed the same tax, the collection of which the Municipal governments rely upon to meet expenses, already incurred, largely for educational purposes; but involves, as well the power of this Municipality and other municipalities in Porto Rico, to levy this or a similar tax upon the manufacture of sugar, the chief industry and source of wealth here. There is involved, also, the power of the municipal governments to impose a tax upon the manufacture of any goods, articles, or products manufactured by any one within their respective jurisdiction. If the taxing power be limited to the extent as held by the judgment of the Circuit Court of Appeals the Municipal income would be so reduced that the municipalities will not be able to carry the burden of public service and to discharge the obligations imposed upon them under section 9 of the Act No. 85 of the 2nd. Session of the Legislature of Porto Rico of 1919 and

Section 29 of Act 9 of the laws of 1920, reorganizing the municipalities of Porto Rico.

The said judgment of the Circuit of Appeals is directly at variance with at least three decisions of the Supreme Court of Porto Rico, and the well settled taxing policy, approved by these decisions.

A very grave situation must follow if the reversal of the judgment of the Supreme Court of Porto Rico be finally approved. It would be with great loss and prejudice to important public service imposed by law upon the municipalities, such as public education, roads, sanitation, and many others, that the municipal budget could at all be balanced.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued under the seal of the Court directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and to send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Circuit of Appeals in the said cause entitled "Central Victoria, Ltd. plaintiff-appellant vs. Juan Pérez Cami, Municipal Commissioner of Finance, defendan-appellee, No. 1607", to the end that same may be reviewed and determined by this Honorable Court; and that the said judgment of the said Circuit Court of Appeals be reversed, and for such other and further relief as may seen proper.

(Signed) *E. B. WILCOX,*

JUAN B.SOTO,
Counsel for Petitioner.

Juan Pérez Gami being duly sworn deposes and says: I am the petitioner herein and I have read the foregoing petition and same is true to the best of my knowledge, information, and belief.

(Signed) *Juan Pérez Camy.*

Subscribed and sworn to before me in San Juan, Porto Rico, on this the 7th. day of the month of April, 1924 by Juan Pérez Cami whom I personally know.
(SEAL)

(Signed) *J. VALLDEJULY RODRIGUEZ*
Notary Public.

CERTIFICATE OF COUNSEL.

We hereby certify that we have examined the foregoing petition; that in our opinion it is well founded and entitled to favorable consideration by this Court, and that it is not filed for the purpose of delay.

(Signed) *E. B. WILCOX,*

JUAN B. SOTO,

Counsel for Pettioner.

IN THE SUPREME COURT OF THE UNITED STATES

(OCTOBER TERM, 1923).

JUAN PEREZ CAMI,
MUNICIPAL COMMISSIONER
OF FINANCE
Petitioner.
vs.
CENTRAL VICTORIA, LTD.
Respondent.

No.----------

PETITIONER'S BRIEF
IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.

STATEMENT.

On March 17th, 1921 respondent herein filed a verified petition praying for an injunction against the petitioner in the District Court of the Judicial District of San Juan, Porto Rico—Second Division, for the purpose of testing the legality of an ordinance enacted by the Municipal Assembly of the Municipality of Carolina, Porto Rico, imposing a tax of ten (10) cents upon the manufacture of every hundred pounds of sugar manufactured within the limits of the Municipality, alleging in the said petition that the said tax thus imposed was "illegal and null" (Record, p. 1). On the same date the District Court under a separate petition granted a preliminary injunction. (Record, p. 6).

On March 28th, 1921 petitioner herein, respondent below, filed his verified answer to the petition for a permanent injunction denying all the allegations of the petition except these alleging the enactment of the ordinance on February 17th, 1921; that under its terms petitioner is authorized, either in person or through employees of his department to

ascertain whether statements made by respondent as to the amount of sugar manufactured from time to time, is correct, and that petitioner proposed to collect the tax levied thereunder after July 1st, 1921. (Record, p. 9). By the allegations of the petition it appears that respondent is a corporation engaged in the manufacture of sugar within the Munimipality of Carolina, P. R. (Record, p. 3).

By stipulation of the parties (Record, p. 23) the petition for a permanent injunction was submitted on these pleadings to the District Court, no evidence being taken. This Court held that the tax was null and void and permanently enjoined its collection. (Record, p. 31). From this judgment petitioner appealed to the Supreme Court of Porto Rico, which reversed the judgment of the District Court, upholding the validity of the tax, (Record, p. 36) without dissent. Thereupon respondent appealed from this last decision to the United States Circuit Court of Appeals for the First Circuit, which, on February 5th, 1924, upon the authority of the opinion and jugdment in the case of Successors of C. & J. Fantauzzi, Petitioner, Appellant, vs. Municipal Assembly of Arroyo, Appellee, Defendant, No. 1617, reversed the judgment of the Supreme Court of Porto Rico, entering the following PER CURIAM opinion:

> "This case is governed by our opinion in No. 1617, Successors of C. & Fantauzzi vs. Municipal Assembly of Arroyo, Porto Rico." (R. p. 44).

The instant case and the one just named were decided together, the judgment in each being entered on the same date, and the instant case by reference to the Fantauzzi-Arroyo case. Petitions for a writ of certiorari are filed together in this Court to be addressed to the C. C. A. of the First Circuit to review the judgment of both cases.

By reference to the opinion in the other case (its record, p. 112) it will be seen that the judgment it rendered in that case, and therefore in this, was based upon the proposition contained in these words of the opinion:

> "Where, as in this case, a license has been imposed for carrying on the business of a sugar and molasses

mill, within the municipality, we think no additional tax can be imposed upon the business of manufacturing sugar, one of the necessary elements of the general business."

We say that, assuming arguendo, as correct the conclusion above quoted as to the other case, that in this, there is nothing in the record to justify its application to this case, and it is urged that the judgment in this case therefore stands without any foundation whatever. We must conclude that the Circuit Court of Appeals overlooked the fact that the records of the two cases are fundamentally different in this respect and that in this case the ground upon which it based its decision does not exist.

ERRORS ASSIGNED

(*a*) In holding that there had already been imposed a license upon respondent for the year of 1921 for conduction the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of the sugar within the Municipality by the ordinance enacted February 17th. 1921, effective after July 1st. 1921.

(*b*) Assuming that a license tax had already been imposed upon respondent for the year of 1921 for conducting the business of a sugar mill, the Circuit Court of Appeals erred in holding that the tax upon the manufacture of sugar imposed by the ordinance of February 17th, 1921, effective after July 1st, 1921, was double taxation and therefore invalid."

(*c*) In holding that it was the intention of the Legislature of Porto Rico that any excise tax which should be levied by the Municipality should be one other than these enumerated in Act No. 26 of the Legislature of 1914 reenacted by the Legislature in 1920, (d) of section 49 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th, 1921 by the Act

of Congress of 1917, known as the Organic Act for Porto Rico, or the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of February 17th, 1921, imposing a tax upon the manufacture of sugar was a constituent element of a business already tax by a license tax, and therefore invalid and not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th, 1921.

ARGUMENT.

The errors assigned in this case are the same as those assigned in the case of Municipal Assembly of Arroyo, Petitioner vs. Successors of C. & J. Fantauzzi, Respondent in which a petition for a writ of certiorari is filed at the same time to review the judgment of the same Court.

In the other case all the errors assigned are argued at length and those arguments apply to the errors assigned here, with the diference, as we contend, that the record in this case is fundamentally different from the record in the other case, resulting in the necessity of a different argument as to error (a) in this case from that which could be made as to error (a) in the other case on the sole ground upon which both cases were decided. We think that we might, then, for the sake of brevity, refer the Court, with its permision, as to all the errors herein assigned, except (a), to the arguments in support of the petition in the other case, and we shall serve opposing counsel, in this case with a copy of the petition and brief in the other case.

Error (*a*)—In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the municipality by the ordinance enacted February 17th, 1921, effective after July 1st, 1921.

There is nowhere any evidence in this record which shows that the Municipality of Carolina or that the Insular Govern-

ment had imposed any license or excise tax upon the respondent, prior to that imposed by petitioner by virtue of its ordinance of February 17th, 1921. The contention of respondent has always been that the tax imposed is a property tax, and was a surtax on property assessable in the municipality in excess of one per cent allowed by law, was tantamount to an export tax, was oppressive, was levied without establishing a basic value of the property upon which it was levied, and imposed a double tax on property. (Record, pp. 3, 4). The verified answer denies these and all other allegations except that the ordinance was enacted; that under its terms the petitioner might ascertain the correctness of the statements of sugar factories as to the amount of sugar manufactured from time to time and that petitioner proposed to collect the tax levied by the ordinance. (Record, p. 9). The case was submitted on the pleadings, without evidence. (Record, p. 23).

The District Court did not decide whether the tax attacked was a property tax or an excise. Both the Supreme Court of Porto Rico and the C. C. A. held it to be an excise.

Stratton's Independence vs. Howbert, 231 U. S. 399, 415; Patton vs. Brady, 184 U. S. 608", Sugar Refining Co. vs. Mc Clain, 192 U. S., 397.

BOTH PORTO RICO COURTS RECOGNIZED THAT THERE WAS NO EVIDENCE OF PRIOR TAX IN THE CASE.

An examination of the record shows this. For the tax attacked to be double, as held by the C. C. A., a prior tax imposed upon the respondent, either by the Legislature or the petitioner would have to be shown. It could not be said that an occupation tax had been imposed by the Legislature unless it be contended that such was done by the terms of the Act No. 26 of the Legislature of 1914 reenacted by the Legislature in the New Municipal law of 1919 as amended by the Acts of the Legislature 1920, Act No. 9 (third special session). But it is clear from the terms of this act that no levy was made by it, but authority was granted to the municipalities to make such a levy under the maximum rates therein provided.

On this point the pertinent part of Act No. 26 of the Legislation is:

SECTION 1:

> "That the municipal councils of all the municipalities of the Island of Porto Rico, *are hereby authorized* to levy and collect, under the provisions of this act, on and from every person, firm x x x x engaged in any of the businesses or industries herein after mentioned, the taxes hereinafter enumerated, *at the rates hereinafter prescribed, or such uniform per centage of rates as the said municipal councils* may prescribe. x x x; Provided, *That if any municipality shall levy said taxes, at less than the full rates herein prescribed, for any business or industry subject to taxation* in accordance with this Act, *proportional reduction from said full rates shall be made* for all the business or industries within the said municipality." (Italics supplied).

SECTION, 2.—

> "That the businesses or industries upon which the taxes herein provided, *may be levied,* shall be the following:" (Italics supplied).

GROUP "C"

> "The business of sugar and molasses mills, brokers, commission merchants, agents with permanent offices, and real estate agents."

The C.C.A. concedes that no levy was made by the Legislature the terms of this act when it held in the case of Successors of C. & J. Fantauzzi vs. Municipal Assembly of Arroyo that the prior tax was levied by the Municipality in that case. It seems perfectly clear that in order that a levy be made under the authority of the Act of 1914 upon a business, an ordinance would have to be enacted by the municipality which might elect to avail itself of the benefits of that authority. Assuming that this be so; that it has always been contended by the petitioner that there is nothing in this record to show that the Municipality ever passed such an ordinance, was recognized by the District Court of San Juan and the Supreme Court of Porto Rico.

At page 27 of the record in the opinion of the District Court it is said:

> " x x x and supposing that the tax under consideration is an excise tax and the article taxed was not the object or matter of any other insular tax—a question which we cannot now decide if we adhere to the record of the case—"

It is obvious that when the District Court made use of the words "any other insular tax" it had reference to a tax imposed by the Municipality, for if reference had been made to a tax imposed by an act of the Legislature the act imposing it need not appear in the record, but would be available for its consideration as a law of the jurisdiction of which it could take judicial knowledge.

On this point the Supreme Court, at page 34 of the record, says:

> "Appellant (petitioner herein) also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appellant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case."

As stated, the sole ground upon which the C. C. A. based its reversal of the judment of the Supreme Court of Porto Rico in the case of Fantauzzi vs. Municipal Assembly of Arroyo was that the municipality having imposed a business tex upon Successors of Fantauzzi could not impose a tax upon the manufacture of sugar as the latter was a constituent element of the business already taxed. By applying that holding to this case the reversal rests, of course, on that sole ground in this case, and our contention is that that ground is not to be found in this case, and that the judgment of reversal is without foundation.

NO EVIDENCE OF DOUBLE MUNICIPAL TAXATION IN THE RECORD.

We assume that the Act of 1914 did not constitute a levy upon respondent, but will be held to be an authority to the

municipalities to impose a tax, if they so elect, within the maximum rates stated in the Act mentioned. It is further assumed that there is no legal presumption that a levy has followed an authorization, whatever may be our experiences and observation.

But assuming, arguendo, that the Municipality prior to the date of the ordinance attacked imposed a license tax under the Act of the Legislature of 1914 upon respondent's business and that same was in force on the date of the ordinance attacked—Feb. 17th. 1921, and assuming further, as hold by the C. C. A. that the tax lovied by the ordinance of February 17th. 1921 was in conflict with the assumed prior license tax and that the last would have been double taxation.

But under such an assumed situation, it is to be observed that by Sec. 5 of the ordinance of February 17th, 1921, it is provided:

> "Any ordinance or resolution, or part thereof, in conflict herewith, is hereby repealed." (R. pp. 1, 2, 3).

Therefore any prior municipal taxing legislation stood repealed.

It must be further observed that according to the terms of the said ordinance it did not became effective until July 1st. 1921, over four months later.

Assuming, arguendo, also, that the repealing clause of the ordinance was not sufficient to repeal any prior municipal taxing legislation in conflict with the ordinance mentioned, it cannot be said that the Municipality did not by some other legislation, or would not before the date upon which the ordinance attacked became effective—July 1st, 1921—have repealed any leislation in conflict with the ordinance mentioned.

The presumption, we submit, is, that if there were a prior conflicting tax, that the Municipality did, or would have, before July 1st, 1921, enacted the necessary legislation to repeal it.

Singer Sewing Machine Co. v. Brickell, 233 U. S. 313; Presser v. Illinois, 116 U. S. 252; Parsons v. Bedford, 3 Pet. 433; Cincinnati, N. O. & T. P. R. Co. v. Kentucky, 115 U. S. 321 United States v. Coombs, 12 Pet. 72.

It is further to be noted that there is nothing in the record to show that after the ordinance attacked became effective on July 1st, 1921, that there was in existence any other tax upon the business of respondent or the manufacture of sugar or that petitioner expected or proposed to collect any tax of this character, except the one provided for in the said ordinance.

It is further to be noted that there is no allegation in the petition for the injunction filed by respondent, that any occupation or business tax had been imposed, except the one by the ordinance of February 17th, 1921, and that petitioner has consistently contended that the record shows no other tax which conflicts with the one under consideration, is shown by the reference to this contention by the District Court (Record, p. 27) and by the Supreme Court (Record, p. 31).

We therefore contend that the ground upon which the Circuit Court of Appeals based its reversal does not exist in the record of this case.

Aside from this assignment, the other errors assigned being fully argued in the Arroyo-Fantauzzi case which we understand to apply to both cases alike, the Court is respectfully referred to the brief in that case, if it be thought necessary to consider them in this case.

CONCLUSION.

WHEREFORE IT IS PRAYED that the judgment be reviewed and reversed, and that the judgment of the Supreme Court of Porto Rico be affirmed, and for such other and further relief to which the Court may deem Petitioner entitled.

(Signed) *E. B. WILCOX,*
JUAN B. SOTO.

IN THE SUPREME COURT OF THE UNITED STATES

(October Term, 1923).

JUAN PEREZ CAMI,
MUNICIPAL COMMISSIONER
OF FINANCE
Petitioner.
vs.
CENTRAL VICTORIA, LTD.
Respondent.

No.----------

To Cayetano Coll Cuchí, Esq.,
Attorney for Respondent.

Please take notice, that the annexed petition for a writ of certiorari to the United States Circuit Court of Appeals will be submitted to the Supreme Court of the United States at the opening of the Court on the 26th. day of May, 1924, or as soon thereafter as counsel may be heard.

San Juan, Porto Rico, April 23rd, 1924.

(Signed) *E. B. WILCOX,*
JUAN B. SOTO.
Attorneys for Petitioner.

Service of a copy of the within petition and brief, and of a copy of the petition and brief in the case of Municipal Assembly of Arroyo, Petitioner vs. Successors of C. & J. Fantauzzi, Respondent filed in the Supreme Court of the United States to be addressed to the United States Circuit Court of Appeals for the First Circuit, it hereby admitted this 23rd day of April, 1924, in San Juan, Porto Rico.

Cay. Coll Cuchí,
One of Attorneys for Respondent.

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